

Trade in Amer. y. 16

THE
RIGHTS
OF THE
COLONIES,

And the Extent of the

LEGISLATIVE AUTHORITY

OF

GREAT-BRITAIN,

Briefly STATED and CONSIDERED.

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ADVERTISEMENT.

As so much has been already written upon the subject of Great Britain and her Colonies, it may be thought improper, that the writer of these few pages, should *now* think of submitting them to the public eye.

Yet, as he has hitherto seen nothing which is immediately confined to the point in dispute, a point upon which the whole must turn, he hopes, upon this account, that the following publication will appear neither unseasonable, nor totally unnecessary.

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THE
RIGHTS
OF THE
COLONIES, &c.

IT is extremely difficult, in times of faction, for a writer to divest himself entirely of those prejudices which he contracts by habit, especially if, by choice or accident, he is engaged in the busy scene of politics, and takes a part among those who act their hour upon that uncertain stage.

The reader, or, to carry on the allusion, the spectator of this eventful drama, is in-

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sensibly led into the same difficulties ; he finds his favourite characters interested through the whole ; suspects every unwelcome truth, as tending to surprise his opinion, and to oblige his reason to give her assent contrary to his will.

That such is the complexion of the times, and such the situation of those, who either attempt to inform others, or seek to be instructed themselves, is a truth which we totally disregard, and which our enemies see and contemplate with pleasure.

The writer of these sheets does not mean, by this general charge, to seduce his reader's imagination, or to preclude his judgment : he is desired to weigh the merits impartially, and that is the only difficulty required of him.

That we may, therefore, fairly examine the question before us, I shall not enter into political disputes, or consider the expedience or impropriety of ministerial measures ; much less shall I draw my conclusions from the perplexing intricacies

tricacies of the bar. We are not to search among records, nor amuse ourselves with the fancied concessions or restrictions of royal charters, to fix the bounds of the legislative authority on the one hand, or prescribe the limits of obedience on the other. That vital spirit, by which the whole national powers are actuated and supported, which, however repressed by the intervening prevalence of tyranny or anarchy, has subsisted through ages, and still subsists, can only determine the dispute before us, and decide the point, whether to brand the subject with the ignominious mark of traitor and rebel, or to ascribe to the supreme power the detested appellation of tyrant and oppressor.

That there is an unlimited authority lodged somewhere in every community, and an unreserved obedience to that authority required of every individual, appears from the nature of government. This is the only bond by which men can be kept together, or their union subsist even in idea; for laws presuppose both

power and obedience; and where either of these are defective, the law perishes of course. This, then, is that attracting power which unites both those who rule and those who obey, and draws them to the same common centre; and so sacred has it been held in all ages and countries, that none who are placed within the reach of its influence, have ever been permitted to withdraw their dependence, and transfer it to any other power, without incurring the penalty of rebellion. Upon this foundation every government stands; however it may vary in its form and superstructure; from a careful preservation of this sacred palladium, the Briton has asserted his liberty; to a neglect of it, he may too soon, perhaps, have the misfortune to ascribe his slavery.

But, if this be the condition both of authority and obedience in a state, let us fairly examine wherein the freedom and security of the subject consist, and how far he may be said to claim any liberty, whilst he must necessarily feel and acknowledge

knowledge an unreserved obedience due to a power, wherever it is lodged, from whence there lies no appeal.

The boundaries then, wherein both subject and sovereign are confined, or, in other words, what essentially marks the true characteristics of tyranny and licentiousness, can no otherwise be defined, than by an impartial examination of that constitutional government, under which a man is born, and, consequently, claims as his birth-right.

Without entering then into that extensive field, wherein so many adventurers, in search after the origin of government, have been lost, while they have vainly sought for man in a state of nature, it is amply sufficient for us, in the present disquisition, to begin at the point wherein all rational enquirers must agree ; for, if those who command, require obedience, and those who obey, insist upon liberty, the advocates for both must fix a standard somewhere.

Happily for us, this standard is fixed upon a rock; and, in the glorious struggles for liberty, which distinguish so many pages in our annals, it has been clearly proved and confirmed, that the law of the land is the basis, upon which the prerogative of the crown, and the rights of the people, are founded and established.

The law then is the supreme authority, to which all must have recourse; and, the power of enacting and repealing laws being vested in the crown and two houses of parliament, it follows, as a necessary deduction, that the unlimited power which has been proved to be essential to the existence of every state, must be lodged in those hands.

Hence it is, that in casting our eyes back upon those convulsions in the kingdom, which have shaken the whole frame of this constitution, we find, that the advocates for the power of the crown, and the assertors of public liberty, have appealed to the laws in justification of their respective

respective claims ; and, even after the sword has been drawn, and the scabbard thrown away, each party has endeavoured to shelter its cause under the same inviolable sanctuary.

But these have been struggles between the component parts of the same united supreme authority ; for history does not furnish us with an instance, where liberty has *claimed a right* to supersede or dispense with laws : neither, indeed, can it ; for liberty implies restriction, as a fence against licentiousness ; and licentiousness is tyranny in its most formidable shape. For the same reason, legal authority carries with it of necessity unreserved obedience ; for legal authority, which supposes resistance, supposes, at least, a contending, if not a superior power, which destroys the very idea of government.

But here it will be asked, supposing such an absolute obedience legally required, where shall be found that superior excellence of the British constitution, which secures the meanest subject from
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oppression, and, in that respect, places him above the highest in a state of despotism? The answer is clear; the absolute power here asserted, rests in the whole legislative, not in the partial executive authority. The executive must and ought to be responsible, through every branch and department; the legislative alone is without controul. Hence the dispensing power of the crown is illegal; hence declaratory expositions of general law in either or both houses of parliament, as tending to bind the subject, are unconstitutional; and hence, whatever is enacted by the concurrent authority of the three, cannot be legally opposed, or questioned.

It is thought expedient to set this short sketch before the reader, not to instruct him in any new doctrine, but to remind him of the old; that by this brief compendium of our duty and franchises, he may the more readily see at one view, how far the colonies can extend their claims, and how far they may be listened to,

to, consistent with that constitution from whence alone they derive their existence.

And first, the origin of every colony, receiving its vital powers from the mother-country, can claim no other legal authority, than that which it receives from thence. The emigration of the first adventurers, was not demanded as a right, but extended to them as an indulgence. Had they undertaken to make settlements without such permission, they might have been stopped in their first preparations at home, or have been recalled, when engaged in their enterprize abroad. Had they gradually succeeded by any clandestine measures of their own, they might have been crushed, as unavowed free-booters, by the first invader; had they, to avoid such calamity, thrown themselves under the protection of any foreign state, they would have been treated as rebels by their own.

The first planters then of our colonies, had recourse to royal charters, and may justly demand, under that title, whatever privileges they can derive from thence;

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but these, whatever they are, being granted to them by one branch only of the united supreme authority, can by no means exempt them from the jurisdiction of the whole.

The crown cannot disunite ITSELF from its connexion with the state, under any idea of prerogative, much less can it emancipate a subject from those laws, to which itself is bound; for prerogative in the hands of the crown, is in a general sense, what privilege is in those of parliament, in a more confined one: they are both intended, in certain cases, to enforce the power, or alleviate the rigor of the law; not to carry it into oppression, or to defeat its effect. Whatever claims then the colonies can set up, by virtue of their respective charters, they can proceed no farther than the prerogative of the crown can carry them, even suppose it exerted to its utmost extent; but no prerogative can go beyond the law, consequently no charter.

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If, therefore, the royal prerogative is inadequate to the high demands which the colonies claim under it, they must have recourse to some other authority, by which they may legally assert such privileges : now, the supreme power having been already proved to rest in the crown and parliament united, they can only derive such privileges from thence.

But, this is the very power, whose authority they have insulted, and whose laws they have trodden under their feet. Wherein, then, does the pretended allegiance of the colonies consist? for allegiance they profess :——if it be to the crown, that obedience is limited by law ; for, allegiance to the crown, in an unlimited sense, may terminate in treason ; if to the crown, as necessarily connected with the state, the only proof of their allegiance, is a submission to its laws. The colonies, therefore, must either acknowledge the legislative power of Great Britain in its full extent, or set themselves up as independent states : I say in its full

extent, because if there be any reserve in their obedience, which they can legally claim, they must have a power within themselves superior to that of the mother-country ; for her obedience to the legislature is without limitation.

And this naturally leads us to examine the doctrine which has been industriously propagated, that the colonies are dependent upon the supreme power of Great Britain in every instance, except that of taxation. I will give this proposition, weak and inconclusive as it is, the fairest discussion. We carry over with us, say the colonies, every right and privilege which the British subject at home can claim : now it is the undoubted right of a subject to tax himself, through his representatives ; this, then, is our undoubted right : but we have no representatives in Great Britain ; therefore, we cannot be taxed, but by our representatives in America.

Now, if this argument has any force at all, it must extend to every privilege
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of a British subject, wherein representation is concerned ; for, it is the undoubted birth-right of every Briton, that no law can pass, without his free consent, through his representative.——But this must be a representative in a British Parliament, not a deputy in an American assembly : this is a man, entrusted with his share in guarding the liberties, lives and properties of the subject through the whole British empire ; not one of a few, permitted to make by-laws for the benefit of a particular community, under the sanction of a royal charter. This appears from what has been already said of their particular situation, as well as from the nature of constitutional representation. It has been shewn, that the colonies could carry over with them nothing but what was immediately granted them from hence ; for, it was by an act of indulgence, that they were permitted to transport even their persons :—they can have no personal right of representation in the mother-country, because they are not in
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possession of the particular qualifications annexed to that right :—they can have no inherent right of representation in their own country, because an inherent right implies an independency ; and, independency has been already proved inconsistent with the permitted power of emigration.

It follows, therefore, that the privileges of the British subject, who either by birth, or accident, makes a part of these distant plantations, must be found in the same sacred repository, where the liberty and property of every individual are secure, in the bosom of the king and parliament. In the custody of that supreme enacting and repealing power, in which every subject is virtually concerned, and through which he virtually gives his consent, whether he be personally represented or not ; for, even in the mother-country, a subject of very large property, unless it be of a particular species, has no personal share in representation, whilst the meanest mechanic, who labours hard
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for his daily bread, may, by birth or servitude, enjoy it.

It is evident, therefore, that the true sense of representation consists in the representative power of the people in parliament, by whatever particular mode those representatives are returned. When admitted under the legal form prescribed, whatsoever it be, the individual becomes a representative of the whole ; and, if of those subjects at home, who, though personally unrepresented, are yet unquestionably entitled to every privilege of a Briton, much more of those, whose property is held by a tenure derived from the mother-country.

To sum up the whole in very few words, constitutional rights cannot, from their very nature, have an existence in any other soil, than that which gave them birth. They spring from the genius of the constitutional power, and must be carefully watched under its immediate inspection. That power alone then, can distribute such of those privileges as she shall think proper,

proper, when she suffers a subject to withdraw from under her eye, and to make settlements in distant countries : these may be more or less extensive, as circumstances shall require ; but must be derived from the same source. In any other sense, a colonist is not a subject suffered to transplant himself for the benefit of his native country, but an unnatural rival, nurtured for her destruction.

The reader may, perhaps, by this time, imagine, that I have dwelt too long upon a position, which, when fairly stated, seems to carry nothing problematical in it ; and, indeed, in all ages and countries, where colonisation has been carried on by the authority, and under the sanction, of any state, however splendid the rights of the subject might be under their own meridian, they shone only by a reflected light, when removed to another climate.

Those who are well acquainted with the history of the Roman state, whose foundations were calculated for a fabrick both

of extent and duration, will allow the truth of this remark : they know too, that when those masters of the world found it expedient to make general or particular regulations for the public service, it was the Roman senate and people who decided, and, by their authority, those decisions were carried into execution. It was not from collected suffrages in Italy or Gaul, but from the Forum, and the Capitol, that the thunder of their edicts was heard, and heard with effect, through the whole extent of the empire.

But to finish with an illustration taken from a very late period : when our civil and religious liberties were on the verge of destruction ; when the spirit of the nation united as one man to assert her rights, and the prince who governed, abdicated his charge ; was the throne declared vacant by any other authority, than that of the only supreme power which remained WITHIN THIS KINGDOM ? Or, did that power think it at all necessary to call for the advice and assist-

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ance of the dependent states, when they resolved, *that William and Mary, prince and princess of Orange be, and be declared king and queen of England, France and Ireland, and the dominions thereunto belonging?* Yet, here was an authority, which, without ASKING THE CONCURRENCE OF THE COLONIES, confessedly settled the crown, with all its prerogatives and dependencies, through the whole English empire. And yet the same authority afterwards, with the king at their head, (if the claims of the colonies be *founded*) could not have raised a shilling upon them, though the exigencies of the state demanded it, without *their express consent*.

I shall here close this argument, and address myself to those in particular, whom it immediately concerns; I mean, to every set of men, who have been, now are, or shall at any time be entrusted with the helm of executive government. It will little avail a minister, who shall sacrifice, or shall neglect to assert the rights of

of the supreme authority, to plead the expediency of measures, or the necessities of the times. It will little avail him to shelter his proceedings under unmeaning distinctions, very fit for an advocate to use, who is paid by the client who employs him; but which will not be tamely heard from a minister who is responsible for measures, which, whether singly or in conjunction, *he presumes to guide*. Let him not suppose, on the other hand, that by doing nothing, he hazards nothing; for weakness and supineness in a minister, like cowardice in a soldier, are equally amenable to the bar of justice.

Let those too, who from a spirit of faction, encourage disobedience in the subject, and give a loose to licentiousness, under the name of liberty, let them reflect, that when justice shall exert itself, she will make no distinction between false pretended friends, and real avowed enemies; except that her hand will fall heavier upon those who secretly thwart the best measures through wicked-

wickedness, than upon those who, through weakness, may adopt the worst.

They will do well to reflect, that though the complexion of the times may throw a temporary gloss over the fairest truth, and the prevalence of faction may for a moment carry all before it, yet national rights cannot lose their existence among the confusion of national errors: they may be betrayed by treachery, or be suspended by violence; but, can only perish with the state.

It is true, indeed, that both ministers, and their opponents, may be a faction against the public: yet, they can only have their day; and, in spite of all their efforts, they can never be removed from the reach of their country's justice, till they either destroy this constitution, or render it a faction against itself.

THE END.

